



# THE ATTORNEY GENERAL OF TEXAS

Gerald C. Mann

AUSTIN 11, TEXAS

~~JOHN S. MANN~~  
ATTORNEY GENERAL

Honorable Tom L. Hartley  
Criminal District Attorney  
Edinburg, Texas

Dear Sir:

Opinion Number O-2437

Re: Sheriffs and constables -- over-  
loading -- arrests without warrant--  
Fees of office.

Your request for opinion upon the following questions:

"1. Does a constable or sheriff have any right under the law to mane an arrest for a violation of the 7,000 pound load limit law, without a warrant of arrest?

"2. Does a constable or sheriff have any right, under the law, to make an arrest for a violation of the 7,000 pound load limit law, without a warrant of arrest, when such officer is accompanied by, and working in conjunction with, a weight inspector of the Department of Public Safety?

"3. Where an arrest is made, without a warrant, by a constable or a sheriff, either by himself, or in company with a weight inspector of the Department of Public Safety, of a truck driver, for violation of the 7,000 pound load limit law, and the driver pleads guilty, is the constable or sheriff, as the case may be, entitled to any fee for the arrest? Under these circumstances, is such officer entitled to a fee for the release of the defendant, or to any other fee?

"4. When a driver of a truck is arrested, without a warrant, for a violation of the 7,000 pound load limit law, and pleads guilty and offers to pay his fine, what are the legal costs and the amount thereof that can be assessed him by the Justice of the Peace for such fine?"

has been received and carefully considered by this department.

Opinion No. O-1454 of this department holds, among other things, that constables and sheriffs do not have the right to make arrests without warrants for violations of the load limit law. Said opinion contains a full discussion of said matter and we enclose herewith a copy of that opinion.

Article 1011, Code of Criminal Procedure of Texas, provides that "no item of costs shall be taxed for a purported service which was not performed, or for a service for which no fee is expressly provided for."

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This department has repeatedly ruled that constables and sheriffs are not entitled to fees except for services performed, as outlined by the fee statutes. See opinions numbers O-106, O-693, O-768, O-963, O-1160 and many others of this department.

We quote from opinion No. O-693 of this department as follows:

"A constable is not entitled to a fee of \$2.00 (Article 1065, Code of Criminal Procedure) for reading a warrant of arrest to a motorist for speeding when the motorist is in the custody of and under arrest by a Highway Patrolman. An officer who discharges or releases a defendant from the force and effect of a judgment restraining him is entitled to collect the fee of \$1.00 for a release."

Opinion No. O-1120 of this department holds that it is the duty of the representatives of the Weights and Measures Department to file a complaint against the offender when he weighs a truck and finds that it is overloaded. This opinion also holds that where the Weights and Measures officer arrests the defendant and weighs his truck and is accompanied by a constable and uses the constable's car that the constable is not entitled to any costs or mileage fees. We enclose herewith a copy of said opinion.

Opinion No. O-1189 of this department holds that only where the facts show that the defendant is in the actual and legal custody of a constable at the time he pleads guilty and pays his fine is the constable entitled to a release fee. This opinion further holds that when the defendant mails his fine, voluntarily appears alone or appears in the legal custody of another officer, the constable is entitled to no release fee. We enclose a copy of that opinion. We also enclose a copy of Opinion No. O-963 of this department which contains a full discussion of several questions similar to your questions.

Your questions are answered as follows:

Question No. 1: No.

Question No. 2: No.

Question No. 3: The constable or sheriff would not be entitled to an arrest fee because the same would be an illegal arrest for which no fees are allowed by law. The constable or sheriff would not be entitled to a release fee unless the defendant was in the actual and legal custody of the sheriff or constable at the time he pleaded guilty and paid his fine. The constable or sheriff would not be entitled to any fees that they did not legally earn.

Question No. 4: The Weights and Measures officers are not fee officers and receive a salary from the State of Texas for their services. Constables and sheriffs are not entitled to fees for illegal services performed nor are they entitled to any fees unless they perform legal services. The proper amount of costs in answer to question No. 4 is as follows:

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Trial fee . . . . . \$4.00  
County Attorney's fee . . . . . 5.00

If the fine was assessed at \$1.00, the defendant would have to  
pay \$10.00 as fine and costs.

Very truly yours

ATTORNEY GENERAL OF TEXAS

By /s/ Wm. J. Fanning

Wm. J. Fanning  
Assistant

APPROVED JUN 12, 1940  
/s/ Gerald C. Mann  
ATTORNEY GENERAL OF TEXAS

Approved  
Opinion Committee  
By B W B  
Chairman